

FILED

JUL - 8 2013

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

WLOS

DANIEL MAJOR EDSTROM
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Plaintiff and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re DANIEL MAJOR EDSTROM,) CASE NO.: 12-29353-B-11
Debtor-in-possession.) CHAPTER 11
A.P. NO. 13-02132-B

In re DANIEL MAJOR EDSTROM,) DC NO. DME-2
Debtor-in-possession.)

PLAINTIFFS OPPOSITION TO
DEFENDANT G&P ENTERPRISE
LLC'S MOTION TO DISMISS;

DANIEL MAJOR EDSTROM, and all others
similarly situated,

Hearing:
Date: July 23, 2013
Time: 9:32 a.m.
Ct. No.: 32
Dept: B

Plaintiffs,

v.

AUBURN LAKE TRAILS PROPERTY
OWNERS ASSOCIATION A CALIFORNIA
CORPORATION; ALLIED TRUSTEE
SERVICES A CALIFORNIA
CORPORATION, a Fictitious or Ghost
Entity; G&P ENTERPRISES A
CALIFORNIA LIMITED LIABILITY
COMPANY; and DOES 1-100,

Hon. Thomas C. Holman
501 I Street, 6th Floor, Sacramento,
California 95814, Tel.: (916) 930-4473

Defendants.

INTRODUCTION

Defendant G&P Enterprises LLC's ("G&P" or "Trustee") motion to dismiss is a thinly disguised attempt to obtain a summary-judgment style dismissal. The motion should be overruled because the allegations of the Adversary Proceeding control and there are material facts in dispute making this motion, or summary judgment, inappropriate. Further, Plaintiffs statements are not frivolous and have merit.

One of the central points of the Adversary Proceeding related to G&P is the following. G&P has not been authorized by Auburn Lake Trails Property Owners Association ("ALT" or "Association") in writing as required by the statute of frauds. G&P's communications contain numerous violations of the FDCPA and RFDCPA. G&P is impersonating Allied Trustee Services, Inc. And, among other things, G&P acquired Plaintiffs personal identifying information and used it for an unlawful purpose. G&P's response to Plaintiffs Adversary Proceeding is to file a boilerplate motion in the hopes of a quick dismissal with prejudice.

FACTUAL BACKGROUND

Plaintiff and his non-filing spouse own the property located at 2690 Brown Bear Court, Cool, CA 95614 with APN # 073-141-03-100 ("Subject Property"), see Adv. Proc. ¶ 28. At the time Plaintiff acquired his interest in the Subject Property on or about August 10, 2004, Plaintiff also entered into a contractual relationship with ALT through the Second Restated Declaration of Covenants, Conditions and Restrictions of Auburn Lake Trails ("CC&R's") (Adv. Proc. ¶¶ 29-30). The contract with ALT gave Plaintiff an interest in real property to the common areas of Auburn Lake Trails (Adv. Proc. ¶ 30). The CC&R's contract also gave ALT an interest in real property or encumbrance on Plaintiffs Subject Property (Adv. Proc. ¶ 29). The CC&R's Collection Policy authorizes the Association to use Allied Trustee Services, Inc. for 3rd party assessments collections as well as to act as a Trustee for the statutory lien perfection process required in order to foreclose (Adv. Proc. ¶ 33). At some point in 2007 Allied Trustee Services, Inc. ceased to exist as they ceased to be registered with the CA Secretary of State (Adv. Proc. ¶ 31). Plaintiff alleges numerous problems with the continued use of the name Allied Trustee

1 Services, Inc. (Adv. Proc. ¶ 34). ALT and its agent G&P breached contractual provisions of the
 2 CC&R's Collection Policy (Adv. Proc. ¶¶ 33-34) ("**Breach**" or "**First Breach**"). This First
 3 Breach was the first material breach of the contract and as such, ALT and G&P's right to
 4 lawfully enforce the ALT Collections Policy were rendered unenforceable (Adv. Proc. ¶¶ 34, 47,
 5 60, 129 vi, 131 C, 137, 157 n, 194, 197, 208, 223, 249, 251, 257). All of ALT and G&P's
 6 attempts to collect a debt were contractually and legally flawed because of the First Breach, and
 7 thus Defendant and their alleged agents and trustees had no right to intrude into Plaintiffs affairs.
 8 G&P use as a 3rd party debt collector has never been authorized or ratified by the ALT Board of
 9 Directors or any ALT member (Adv. Proc. ¶ 35). No party affiliated with ALT has been
 10 authorized to send any document, financial information or personal identifying information to
 11 G&P (Adv. Proc. ¶ 35).

12 The Adv. Proc. seeks, among other things, to recover money and property interests from
 13 Defendant, which cannot be done as part of any plan of reorganization or by motion (see Adv.
 14 Proc. pages 35 lines 23-28; page 36 lines 1-28; page 39 lines 10-33; etc.). Defendant repeatedly
 15 picks and chooses individual statements from Plaintiffs adversary proceeding, while ignoring
 16 others, including the many instances Plaintiff seeks damages not available by motion or through
 17 a plan of reorganization. In *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th
 18 163, 173, CA Civ. Code section 3381 defines "damages": "Every person who suffers detriment
 19 from the unlawful act or omission of another, may recover from the person in fault a
 20 compensation therefor in money, which is called damages." The Court concluded that damages,
 21 thus broadly defined, "may include a restitutionary element." (*Cortez*, supra, 23 Cal.4th at p.
 22 174.) Further, defendant fails to conform to bankruptcy requirements and procedures, such as
 23 not specifying whether or not the Motion they bring forth is a core or non-core proceeding
 24 pursuant to 28 USC §157(b), by what authority this court has jurisdiction over Defendants
 25 Motion, and whether or not Defendant consents to the authority of this Court (which cannot be
 26 determined because movant fails to state whether or not their motion is a core proceeding).

27 TYPE OF PROCEEDING AND JURISDICTION

28

PLAINTIFFS adversary proceeding is a core proceeding as defined at 28 U.S.C. §157(b)(2)(b) and (b)(2)(K). This court has jurisdiction over PLAINTIFF's case pursuant to 28 USC 1331 based on federal subject matter jurisdiction because this action concerns, inter alia, property of a bankruptcy estate and pursuant to 28 U.S.C. §1334 as this Court has exclusive jurisdiction of all cases under the bankruptcy code (i.e. Title 11), there are exceptions, but they do not apply, ". . . the District Courts shall have original and exclusive jurisdiction of all cases under Title 11 [i.e. the Bankruptcy Code]." 28 U.S.C. §1334(a) (emphasis added). "The District Court in which a case under Title 11 is commenced or is pending shall have exclusive jurisdiction - (1) of all the property, wherever located, of the Debtor as of the commencement of such case, and of all property of the Estate . . ." 28 U.S.C. §1334(e)(1) (emphasis added). Daniel Major Edstrom filed a Chapter 11 voluntary Petition on May 15, 2012, case # 12-29353-B-11 in the Sacramento Division of the United States Bankruptcy Court, Eastern District of California ("**Edstrom Bankruptcy**"). The filing of a Petition creates an estate comprised of "all legal and equitable interests of the Debtor in property as of the commencement of the case" [11 U.S.C. §541(a)(1)] which definition must be broadly interpreted because "Congress intended a broad range of property . . . to be included in the Estate." United States v. Whiting Pools, Inc., 462 U.S. 198, 204 (1983).


A "debt" is a liability on a claim. 11 U.S.C. § 101(12). A "creditor" is "an entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor," 11 U.S.C. § 101(10)(A), and a "claim" is a "right to payment, whether or not such right is reduced to judgment." 11 U.S.C. § 101(5)(A). The Supreme Court has explained that the definition of "claim" is to be construed broadly, and that a "right to payment" means "nothing more, nor less, than an enforceable obligation." *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 559 (1990); *Premier Capital, LLC v. Gavin (In re Gavin)*, 319 B.R. 27, 31 (B.A.P. 1st Cir. 2004). "Absent an overriding federal interest, the existence of a claim in bankruptcy is generally determined by state law." *Securities Exchange Comm'n v. Cross (In re Cross)*, 218 B.R. 76, 78 (B.A.P. 9th Cir. 1998) (analyzing whether plaintiff had standing to bring § 523(a)(2)(A) action against chapter 7 debtor). State law applies in this instance because the underlying transaction is purely commercial in nature and there is no apparent federal interest, overriding or otherwise.

CONCLUSION

Since Plaintiff's Adversary Proceeding is not frivolous, satisfies the requirements of an adversary proceeding, and sufficiently states claims upon which relief can be granted, Plaintiff respectfully requests that Defendant's motion be denied. To the extent the Court rules Plaintiff has failed to state a claim upon which relief can be granted, Plaintiff requests leave to amend.

Dated: July 8, 2013

Respectfully submitted,



DANIEL EDSTROM,
Plaintiff and Debtor-in-possession